

Exhibit 6



## Money Transfer Detail

Customer: QUALITYD - QUALITY CARRIERS  
Date: Feb 20 2012, 07:45 CST  
Transfer Type: Domestic Wire  
Number of Approvers: 1 (USEPA - USEPA)

## Sender's Debit Information

Originating Party Name: Quality Carriers Inc Accts Payable

Originating Party Account: 5590038815

Amount: 225,598.13

Currency: USD - US Dollar

## Beneficiary's Information

Account: 68010727- U S Environmental Protection Agency

Address 1: 33 Liberty Street

Address 2: New York, NY

Amount: 225,598.13

Currency: USD - US Dollar

## Additional Information

Send Date: 02/15/2012

Value Date: 02/15/2012

## Bank Routing Information

Beneficiary Bank: TREAS NYC - TREAS NYC/FUNDS TRANSFER DIVISION

Address 1: NEW YORK

Address 2: NY

Routing #: 021030004

Payment Method: R - FED

## Originator to Beneficiary Information

Line 1: Site ID 02 B4, Bridgeport OU1

Line 2: Civil Action no. 91 2637 JFG

Line 3: Bill no 2721126S050

## Bank to Bank Information

none

## Control Information

Bank Trace Number: 2012046004031

Customer Trace Number: 004437

Entry Cust/User: RCRAWFOR - QUALITYD

Entry Date/Time: 02/15/2012 13:25:36 CST

Approver 1 Cust/User: COHAN - QUALITYD

Approver 1 Date/Time: 02/15/2012 14:35:57 CST

Status: Confirmed

Report Created: 02/20/2012 07:45:24 CST

## Confirmation Information

Line 1: 120215244897

Line 2: FD#010158

Email

Close

## Money Transfer Detail

Customer: QUALITYD - QUALITY CARRIERS  
Date: Feb 20 2012, 07:45 CST  
Transfer Type: Domestic Wire  
Number of Approvers: 1 (USEPA - USEPA)

## Sender's Debit Information

Originating Party Name: Quality Carriers Inc Accts Payable  
Originating Party Account: 5590038815  
Amount: 55,224.75  
Currency: USD - US Dollar

## Beneficiary's Information

Account: 68010727- U S Environmental Protection Agency  
Address 1: 33 Liberty Street  
Address 2: New York, NY  
Amount: 55,224.75  
Currency: USD - US Dollar

## Additional Information

Send Date: 02/15/2012  
Value Date: 02/15/2012

## Bank Routing Information

Beneficiary Bank: TREAS NYC - TREAS NYC/FUNDS TRANSFER DIVISION  
Address 1: NEW YORK  
Address 2: NY  
Routing #: 021030004  
Payment Method: R - FED

## Originator to Beneficiary Information

Line 1: Site ID 02B4, Bridgeport OU2 OU3  
Line 2: Civil Action no. 1 10 cv 05098  
Line 3: NLH KMW

## Bank to Bank Information

none

## Control Information

Bank Trace Number: 2012046003986  
Customer Trace Number: 004436  
Entry Cust/User: RCRAWFOR - QUALITYD  
Entry Date/Time: 02/15/2012 13:20:46 CST  
Approver 1 Cust/User: COHAN - QUALITYD  
Approver 1 Date/Time: 02/15/2012 14:35:57 CST  
Status: Confirmed  
Report Created: 02/20/2012 07:45:10 CST

## Confirmation Information

Line 1: 120215244895  
Line 2: FD#009974

Email

Close

Exhibit 7





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**VIA E-MAIL AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

FEB 17 2012

Jim Rakitsky  
Quality Distribution Inc.  
150 East Pennsylvania Avenue  
Suite 125  
Downing Town, PA 19335  
jrakitsky@qualitydistribution.com

Eric Rothenberg, Esq.  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
erothenberg@omm.com

RE: Chemical Leaman Tank Lines, Inc. Superfund Site, Logan Township, New Jersey:  
Bill for Collection No. 2721126S050; and Bill for Collection No. 2721126S051

Dear Messrs:

I am writing in regards to the above-referenced bills which the U.S. Environmental Protection Agency ("EPA") submitted to Quality Distribution Inc's ("QDI") for the reimbursement of response costs incurred by EPA in connection with the Chemical Leaman Tank Lines, Inc., Superfund Site ("Site") located in Logan Township, New Jersey.

Operable Unit One -- Bill for Collection No. 2721126S050

On September 26, 2011, EPA submitted Bill for Collection No. 2721126S050 (the "OU1 Bill") to QDI requesting that QDI reimburse EPA in the amount of **\$853,248.06** for Future Response Costs EPA incurred with respect to Operable Unit One ("OU1") response work at the Site. QDI had agreed to pay such response costs when it entered into the Consent Decree in Civil Action No. 91-2637(JFG) (hereinafter, the "OU1 Decree"), which was entered as an order by the U.S. District Court for the District of New Jersey (the "Court") on September 5, 1991.

Section XII, Paragraph B of the OU1 Decree requires QDI to "reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States." Section IV, Paragraph I defines "Future Response Costs" to mean "all costs, including, but not limited to, indirect costs," that the United States incurs in overseeing OU1 remedial work done by QDI. Section XII, Paragraph B provides that QDI "shall make all payments within 45 days" of receipt of EPA's bill. QDI failed to pay the Future Response Costs requested in EPA's OU1 Bill within 45 days of QDI's receipt of the OU1 Bill and QDI has, in fact, not paid EPA for any of the amount requested in the OU1 Bill.

Pursuant to Section XII, Paragraph C of the OU1 Decree, QDI had an opportunity to contest payment of any of the Future Response Costs if EPA had "made an accounting error" or if any of the costs in the OU1 Bill "represents costs that are inconsistent with the NCP." The OU1 Decree states that any such objection "shall be made in writing within 30 days of receipt of the bill." The OU1 Decree also provides that any such objection "shall specifically identify the contested Future Response Costs and the basis for objection." Section XII, Paragraph C of the OU1 Decree also provides that QDI "shall within the 30 day period pay all uncontested Future Response Costs" to EPA and simultaneously "shall establish an interest bearing escrow account ... and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs." The dispute resolution procedures set forth in Section XII, Paragraph C, and Section XIV of the OU1 Decree, "shall be the exclusive mechanisms for resolving disputes" regarding reimbursement of OU1 Future Response Costs.

QDI did not, within 30 days of its receipt of the OU1 Bill, submit a letter to the United States specifically identifying any of the Future Response Costs stated in the OU1 Bill which QDI believed were the result of an accounting error or which represent response costs that were inconsistent with the NCP. As of the date of this letter, EPA has not received any payment from QDI for any costs EPA requested payment of in the OU1 Bill. In addition, QDI has not notified the United States that QDI has established an interest-bearing escrow account and has deposited into that account any amounts stated in the OU1 Bill which QDI may be contesting.

For the reasons stated above, EPA hereby notifies QDI that it is in violation of the OU1 Decree for failure to pay the Future Response Costs demanded in the OU1 Bill.

Interest has been accruing on the **\$853,248.06** unpaid amount in accordance with Section XII, Paragraph D of the OU1 Decree. That interest started to accrue 45 days after QDI's receipt of the OU1 Bill and that interest will continue to accrue until EPA receives full payment of the amount demanded in the OU1 Bill. Interest accrues at the rate established pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607.

In accordance with Section XV, Paragraph C of the OU1 Decree, QDI is also subject to stipulated penalties in the amount of \$750.00 per day per violation, accruing from the day after payment was due through the date of payment of the full amount owed.

#### Operable Units Two and Three -- Bill for Collection No. 2721126S051

On September 26, 2011, EPA submitted Bill for Collection No. 2721126S051 (the "OU2/OU3 Bill") to QDI requesting that QDI reimburse EPA in the amount of **\$236,436.95** for Future Response Costs EPA incurred with respect to response work relating to Operable Units Two and Three at the Site. QDI had agreed to pay such response costs when it entered into the Consent Decree in Civil Action No. 1:10-cv-05098-NLH-KMW (hereinafter, the "OU2/OU3 Decree"), which was entered as an order of the Court on February 2, 2011.

Section XVI, Paragraph 55 of the OU2/OU3 Decree requires that QDI "shall pay to EPA all Future Response Costs not inconsistent with the NCP." Paragraph 4 defines "Future Response Costs" to mean



"all costs, including, but not limited to, direct and indirect costs," incurred by the United States in connection with OU2 remedial work and in connection with the OU3 remedy at the Site. Under Paragraph 55.a, QDI "shall make all payments within 30 days" of its receipt of EPA's bill. QDI failed to pay the Future Response Costs requested in the OU2/OU3 Bill within 30 days after QDI received that Bill, as required by the OU2/OU3 Decree.

Section XVI, Paragraph 57 of the OU2/OU3 Decree states that QDI may contest Future Response Costs billed by EPA, but only if it determines that EPA "made a mathematical error or included a cost item that is not within the definition of Future Response Costs" or that EPA "incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP." Such objection "shall be made in writing within 30 days of receipt of the bill" and "shall specifically identify the contested Future Response Costs and the basis for objection." In the event of an objection, QDI "shall pay all uncontested Future Response Costs to the United States within 45 days" of receipt of the contested bill. In addition, QDI "shall establish an interest-bearing escrow account ... and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs." The dispute resolution procedures set forth in Section XVI, Paragraph 57, and Section XIX of the OU2/OU3 Decree, "shall be the exclusive mechanisms for resolving disputes" regarding the reimbursement of Future Response Costs for OU2 and OU3.

QDI did not, within 30 days of its receipt of the OU2/OU3 Bill, submit a letter to the United States specifically identifying any of the Future Response Costs which QDI believed were the result of a "mathematical error" or which were "not within the definition of Future Response Costs" or which were excess costs "incurred...as a direct result of an EPA action that was inconsistent with a specific provision... of the NCP." As of the date of this letter, EPA has not received any payment from QDI for any of the costs EPA requested payment of in the OU2/OU3 Bill. In addition, QDI has not notified the United States that QDI has established an interest-bearing escrow account and has deposited into that account any amounts stated in the OU2/OU3 Bill which QDI may be contesting.

For the reasons stated above, EPA hereby notifies QDI that it is in violation of the OU2/OU3 Decree for failure to pay the Future Response Costs demanded in the OU2/OU3 Bill.

Interest has been accruing on the **\$236,436.95** unpaid amount in accordance with Section XVI, Paragraph 58 of the OU2 Decree. That interest started to accrue from the date of the OU2/OU3 Bill and that interest will continue to accrue through the date of full payment of the billed amount. Interest accrues at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

In accordance with Section XX of the OU2/OU3 Decree, QDI is also subject to stipulated penalties in the amount of \$5,000 to \$20,000 per day per violation. Stipulated penalties continue to accrue from the date of each violation through the date of payment of the full amount owed.

#### Failure to Pay May Result in Referral to the United States Department of Justice for Collection

Payment of the amount demanded in the OU1 Bill and the amount demanded in the OU2/OU3 Bill is overdue and payment must be made immediately, plus interest pursuant to Section XII, Paragraph D of the OU1 Decree and Paragraph 58 of the OU2/OU3 Decree, respectively. If payment, with interest, is not made within 7 days after the date of this Notice, the payment amount, plus all accrued interest and

penalties may be referred to the U.S. Department of Justice ("USDOJ") for enforcement and collection. No additional EPA notice will be sent. Any referral to the USDOJ will also seek enforcement costs, including costs for EPA and DOJ attorneys, as appropriate.

Please note that no communications with any official at EPA will relieve QDI of its obligation to pay amounts required by this letter unless advised otherwise in writing by EPA. If you have any questions or wish to discuss this matter further, please contact Juan M. Fajardo, Assistant Regional Counsel, at (212) 637-3132.

Sincerely,

A handwritten signature in black ink, appearing to read "Carole Petersen", with a stylized, flowing script.

Carole Petersen, Chief  
New Jersey Remediation Branch  
Emergency & Remedial Response Division

cc: David L. Weigert, U.S. Department of Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1868

**VIA E-MAIL AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**MAR 13 2012**

Eric Rothenberg, Esq.  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
erothenberg@omm.com

RE: Chemical Leaman Tank Lines, Inc. Superfund Site, Logan Township, New Jersey  
Bill for Collection No. 2721126S050 and Bill for Collection No. 2721126S051

Dear Mr. Rothenberg:

This letter is in response to your letter dated February 22, 2012 ("Your Letter") to Carole Peterson, Chief, New Jersey Remediation Branch, Emergency & Remedial Response Division which responds to Carole Peterson's February 17, 2011 ("EPA's Letter") letter concerning the above-referenced bills<sup>1</sup>.

As you know, on September 26, 2011, the U.S. Environmental Protection Agency submitted two bills to Quality Distribution Inc. ("QDI"), namely, the OU1 Bill requesting the reimbursement of \$853,248.06 for Future Response Costs incurred by EPA with respect to Operable Unit One, and the OU2/OU3 Bill requesting the reimbursement of \$237,159.35 for Future Response Costs incurred by EPA with respect to Operable Units Two and Three at the Site. On February 15, 2012, QDI paid **\$225,598.13** of the **\$855,845.53** demanded by EPA in the OU1 Bill, and paid **\$55,224.75** of the **\$237,159.35** demanded by EPA in the OU2/OU3 Bill. The amounts paid by QDI fall far short of the amounts demanded by EPA.

As stated in EPA's Letter, QDI has failed to: a) pay the full amount of Future Response Costs demanded by EPA in the OU1 Bill and the full amount of Future Response Costs demanded by EPA in the OU2/OU3 Bill; b) properly contest Future Response Costs in the OU1 Bill and/or the OU2/OU3 Bill; and c) properly raise dispute resolution for Future Response Costs in the OU1

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<sup>1</sup> Bill for Collection No. 2721126S050, hereinafter, the "OU1 Bill", and Bill for Collection No. 2721126S050, hereinafter, the "OU2/OU3 Bill."

Bill and/or the OU2/OU3 Bill<sup>2</sup>. EPA, therefore, informed QDI that it was in violation of the OU1 Decree, as well as, the OU2/OU3 Decree.

QDI remains in violation of both the OU1 and the OU2/OU3 Decrees for its failure to reimburse EPA for the Future Response Costs which EPA requested QDI pay pursuant to the terms of the OU1 Decree and the OU2/OU3 Decree. In addition to the unpaid amounts due and payable to EPA, QDI is also subject to interest and stipulated penalties, as provided for in the OU1 Decree and the OU2/OU3 Decree.

Your Letter states that QDI seeks formal dispute resolution with EPA concerning the Future Response Costs in the OU1 Bill and the OU2/OU3 Bill. However, QDI has failed to comply with the requirements set forth in the OU1 Decree and the OU2/OU3 Decree for contesting Future Response Costs and for raising dispute resolution<sup>3</sup>. QDI has, therefore, waived its right to seek formal dispute resolution for any of the costs sought by EPA in the OU1 Bill and the OU2/OU3 Bill.

Nonetheless, EPA would be willing to afford QDI a final opportunity to enter into formal dispute resolution with EPA if QDI complies with the provisions set forth in the OU1 Decree and the OU2/OU3 Decree with respect to contesting Future Response Costs and raising dispute resolution. Accordingly, QDI must within fifteen (15) days of the date of this letter: a) establish an interest-bearing escrow account and deposit into such an escrow account the total amount of the contested Future Response Costs (i.e., \$812,182.00); and b) provide EPA with a Written Statement of Position<sup>4</sup> specifically identifying the contested Future Response Costs and the basis of objecting to those costs. If QDI fails to satisfy both of these conditions within fifteen (15) days of the date of this letter, EPA will not participate in formal dispute resolution and this matter will be referred to the U.S. Department of Justice for collection.

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<sup>2</sup> Contrary to the claim in Your Letter, QDI did not provide a "Notice of Dispute" to EPA by letter dated October 19, 2011 ("October Letter"). In fact, the term "notice of dispute" does not appear in the October Letter, or does the word "dispute." More importantly, the provisions for submitting a "Notice of Dispute" are set forth in the Consent Decree in Civil Action No. 91-2637(JFG) (the "OU1 Decree") and in the Consent Decree in Civil Action No. 1:1-cv-05098-NLH-KMW (the "OU2/OU3 Decree"). QDI has not provided, and your October Letter does not include, the information required by those provisions. Your October Letter merely seeks "back-up" documentation for the costs in the OU1 and OU2/OU3 Bills.

<sup>3</sup> The provisions for contesting Operable Unit One Future Response Costs and seeking dispute resolution for such costs are set forth in Sections XII and XIV of the OU1 Decree. The provisions for contesting Operable Unit Two and Operable Unit Three Future Response Costs and seeking dispute resolution for such costs are set forth in Sections XVI and XIX of the OU2/OU3 Decree.

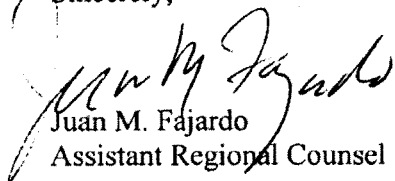
<sup>4</sup> As you know, the OU1 Decree and the OU2/OU3 Decree both require QDI to submit a written notice to EPA specifying which Future Response Costs it seeks to contest and the basis for contesting such costs. Both Decrees also include dispute resolution provisions requiring QDI to submit a written Statement of Position to EPA. QDI has not submitted a written notice to EPA contesting the Future Response Costs in the OU1 Bill and/or the OU2/OU3 Bill which QDI is seeking to contest and the basis for contesting such costs. Therefore, QDI must now provide EPA with a Statement of Position that includes the information EPA would have received in a written notice contesting Future Response Costs.

Nothing in this letter is intended to waive nor does it waive or affect in any manner any right, claim, interest or cause of action which EPA may have against QDI under the OU1 Decree and/or the OU2/OU3 Decree and/or any other matter under federal law. EPA specifically reserves the right to seek all interest and penalties (including any stipulated penalties that have already accrued) which EPA may be entitled to recover pursuant to the terms of the OU1 Decree and/or the OU2/OU3 Decree.

Interest has been accruing on the unpaid Future Response Costs demanded in the OU1 Bill and in the OU2/OU3 Bill, and will continue to accrue until EPA receives full payment of the total amount demanded in each of these two Bills. Interest accrues at the rate established pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607.

Please give this matter your immediate attention. You should feel free to call me at (212) 637-3132, if you wish to discuss this matter further.

Sincerely,



Juan M. Fajardo  
Assistant Regional Counsel



Exhibit 8







RE: Re: FW: QDI/ Bridgeport Escrow confirmation  
Rothenberg, Eric

to:

Juan Fajardo

04/05/2012 11:42 AM

Cc:

"David.Weigert@usdoj.gov"

Hide Details

From: "Rothenberg, Eric" <erothenberg@omm.com>

To: Juan Fajardo/R2/USEPA/US@EPA

Cc: "David.Weigert@usdoj.gov" <David.Weigert@usdoj.gov>

History: This message has been forwarded.

Thanks. We'd like to request a meeting with Walter in advance of his decision.

**From:** Juan Fajardo [<mailto:Fajardo.Juan@epamail.epa.gov>]

**Sent:** Thursday, April 05, 2012 10:55 AM

**To:** Rothenberg, Eric

**Cc:** David.Weigert@usdoj.gov

**Subject:** RE: Re: FW: QDI/ Bridgeport Escrow confirmation

We'll get back to you on this.

On a separate issue, we are dealing with 2 bills based on 2 separate decrees. You sent us one Statement of Position which covers both bills. Assuming we continue with formal dispute resolution notwithstanding QDI's failure to establish an "escrow account," we will provide our Statement of Position to QDI by Monday April 23, 2010 in accordance with the provision in the OU2/OU3 Decree. Also pursuant to the OU2/OU3 Decree, the matter will go to Walter Mugdan, Director of ERRD, Region 2, who will issue a final decision resolving the dispute.

-----"Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)> wrote: -----

To: Juan Fajardo/R2/USEPA/US@EPA

From: "Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)>

Date: 04/05/2012 10:05AM

Cc: "[David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)" <[David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)>

Subject: RE: Re: FW: QDI/ Bridgeport Escrow confirmation

The \$820K has been placed in a separate interest-bearing account and will remain there until dispute is resolved. Not sure what more you want to see.

**From:** Juan Fajardo [<mailto:Fajardo.Juan@epamail.epa.gov>]  
**Sent:** Thursday, April 05, 2012 10:03 AM  
**To:** Rothenberg, Eric  
**Cc:** [David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov); Rothenberg, Eric  
**Subject:** RE: Re: FW: QDI/ Bridgeport Escrow confirmation

How does that comport with the requirement in each decree that QDI establish and fund an "escrow account?" Again, formal dispute resolution is conditioned on QDI establishing and funding an escrow account in the amount of contested costs.

-----"Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)> wrote: -----

To: Juan Fajardo/R2/USEPA/US@EPA  
 From: "Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)>  
 Date: 04/05/2012 09:59AM  
 Cc: "[David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)" <[David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)>, "Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)>  
 Subject: RE: Re: FW: QDI/ Bridgeport Escrow confirmation

My understanding is that the Company will consider this a reserved amount and so state in its quarterly (10Q) reports. Let me know what more you need.

**From:** Juan Fajardo [<mailto:Fajardo.Juan@epamail.epa.gov>]  
**Sent:** Thursday, April 05, 2012 9:58 AM  
**To:** Rothenberg, Eric  
**Cc:** [David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)  
**Subject:** RE: Re: FW: QDI/ Bridgeport Escrow confirmation

The only confirmation I received was the one you sent by e-mail on Monday 4/2/12. That is the one we are unable to confirm is an escrow account (my e-mail of 4/3/12). We need proof that the account is actually an escrow account.

-----"Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)> wrote: -----

To: Juan Fajardo/R2/USEPA/US@EPA  
 From: "Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)>  
 Date: 04/05/2012 09:33AM  
 Cc: "[David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)" <[David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)>  
 Subject: RE: Re: FW: QDI/ Bridgeport Escrow confirmation

Did you not get the confirmation notice I sent over?

**From:** Juan Fajardo [<mailto:Fajardo.Juan@epamail.epa.gov>]  
**Sent:** Thursday, April 05, 2012 9:32 AM  
**To:** Rothenberg, Eric  
**Cc:** [David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)  
**Subject:** Fw: Re: FW: QDI/ Bridgeport Escrow confirmation

Eric,

I have not heard back from you re: the escrow account. As you know, formal dispute resolution is conditioned on QDI establishing and funding an escrow account in the amount of contested costs. You indicate in your March 30, 2012 letter that such an account has been

established. Is that in fact the case? If so, we must receive documentation demonstrating that an escrow account has been established and funded in the required amount.

Juan

-----Forwarded by Juan Fajardo/R2/USEPA/US on 04/05/2012 09:18AM -----

To: [erothenberg@omm.com](mailto:erothenberg@omm.com)  
From: Juan Fajardo/R2/USEPA/US  
Date: 04/03/2012 12:48PM  
Cc: [David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov), [erothenberg@omm.com](mailto:erothenberg@omm.com)  
Subject: Re: FW: QDI/ Bridgeport Escrow confirmation

Eric,

We are unable to determine that the account is an "escrow" account. Please provide information showing that the account is an escrow account.

Juan

-----"Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)> wrote: -----

To: Juan Fajardo/R2/USEPA/US@EPA  
From: "Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)>  
Date: 04/02/2012 01:38PM  
Cc: "Weigert, David (ENRD)" <[David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)>, "Rothenberg, Eric" <[erothenberg@omm.com](mailto:erothenberg@omm.com)>  
Subject: FW: QDI/ Bridgeport Escrow confirmation

Let me know if you need more

**From:** Jon Gold [<mailto:jgold@qualitydistribution.com>]  
**Sent:** Thursday, March 29, 2012 12:03 PM  
**To:** Rothenberg, Eric  
**Cc:** Jim Rakitsky  
**Subject:** Re: FW: QDI/ Bridgeport

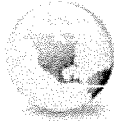
The account has been established and funded. Confirmation is attached.

[attachment "Bridgeport EPA\_Wire confirm 03-28-2012.pdf" removed by Juan Fajardo/R2/USEPA/US]



Exhibit 9





**FW: EPA Side Letter; Chemical Leaman - OU2 consent decree/costs after effective date. (Revised)**

Rothenberg, Eric to: Juan Fajardo  
Cc: "Rothenberg, Eric"

02/06/2012 10:38 AM

From: "Rothenberg, Eric" <erothenberg@omm.com>  
To: Juan Fajardo/R2/USEPA/US@EPA  
Cc: "Rothenberg, Eric" <erothenberg@omm.com>

History: This message has been replied to and forwarded.

Here you go

----- Original Message -----

From: Fajardo.Juan@epamail.epa.gov <Fajardo.Juan@epamail.epa.gov>  
To: Rothenberg, Eric  
Cc: DWeigert@ENRD.USDOJ.GOV <DWeigert@ENRD.USDOJ.GOV>  
Sent: Mon Aug 30 10:31:22 2010  
Subject: Chemical Leaman - OU2 consent decree/costs after effective date.

Eric:

The Operable Unit Two (OU2) consent decree includes provisions for the reimbursement of "Past Response Costs" incurred by the United States from January 1, 2004 through March 15, 2010. As you know, EPA has conducted OU2 response work at the Site and has incurred OU2 response costs after March 15, 2010. More specifically, EPA is overseeing QDI's removal of soils at locations deemed to be "hot spots," and as a result, has incurred additional response costs in connection with OU2 as the Site. Moreover, the United States has incurred "enforcement costs" in connection with OU2 since March 15, 2010. Those enforcement costs are related to the OU2 consent decree we have been negotiating and which QDI signed on August 27, 2010.

In comparison to the more than \$1.93 million in OU2 past response costs incurred by the United States from January 1, 2004 through March 15, 2010, the OU2 response costs incurred by the United States after March 15, 2010, are not believed to be substantial.

Juan M. Fajardo  
Assistant Regional Counsel





Exhibit 10





## O'MELVENY & MYERS LLP

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February 22, 2012

OUR FILE NUMBER  
0688362-00020

Carole Peterson  
Chief - NJ Remediation Branch  
U.S. EPA Region 2  
Emergency and Remedial Response Division  
290 Broadway, 19th Floor  
New York, NY 1007-1866

WRITER'S DIRECT DIAL  
(212) 326-2003

WRITER'S E-MAIL ADDRESS  
crothenberg@omm.com

Re: *Chemical Leaman Tank Lines, Inc, Superfund Site; Bridgeport NJ;  
Quality Distribution Inc. (QDI) Statement of Position and Request for  
Formal Dispute Resolution in Respect of First, Second and Third  
Operable Unit Oversight Costs*

Dear Ms. Peterson:

I am in receipt of your February 17, 2012 notice in the referenced matter, noting that U.S. EPA Region 2 is terminating informal negotiation on the referenced oversight cost challenge. Your letter suggests that no payment has been received as to the costs. In fact, on February 15th, and following our last discussion with Juan Fajardo of your office and David Weigert at US DOJ, \$280,822.88 was deposited in consideration of the EPA portion of the oversight costs for each of the three operable unit oversight costs and confirmation was provided as required under the subject Consent Decrees.

This letter constitutes QDI's request for formal dispute resolution and Statement of Position as to the same. QDI timely provided its original Notice of Dispute on October 19, 2011 resulting in entry of a confidentiality agreement for review of documents on November 22, 2011. EPA provided documents in support of its oversight costs claim on December 12, 2011 and several written and oral exchanges followed in an effort to reach resolution, including QDI's statement and documentation as to its challenge. The period for informal dispute resolution was extended through these exchanges by mutual consent of the parties, culminating in a final offer of settlement on February 3, 2012. These exchanges are incorporated by reference herein and form the administrative record for the formal dispute resolution requested. QDI reserves the right to supplement the record following receipt of the Agency's Statement of Position.

O'MEIVENY & MYERS LLP

Carole Peterson, February 22, 2012 - Page 2

We very much regret that our informal negotiations did not produce a mutually-acceptable resolution of the Agency's oversight cost claim. You may be assured that the Company will otherwise discharge its obligations under the subject Consent Decrees.

Very truly yours,



Eric Rothenberg

cc: Juan M. Fajardo, Esq.  
David L. Weigert, Esq.

11 t.9.4x3





## O'MELVENY & MYERS LLP

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May 11, 2012

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**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

WRITER'S E-MAIL ADDRESS  
crothenberg@omm.com

Juan M. Fajardo, Esq.  
U.S. EPA - Region 2  
Emergency and Remedial Response Division  
Office of Regional Counsel  
290 Broadway - 19th Floor  
New York, NY 10007

Re: **Statement in Reply by Quality Distribution Inc., (QDI) in connection with  
Oversight Cost Challenge on Chemical Leaman Tank Lines; Bridgeport, NJ  
Superfund Site (Site)**

Dear Juan:

This serves to provide our Reply to the Agency's Response received on April 30, 2012 to QDI's March 30, 2012 Statement of Position in the referenced matter. This will also confirm our request for a meeting with Walter Magden, Esq. in connection with this dispute proceeding.

**QDI timely notified EPA of this dispute.**

Contrary to EPA's assertions, QDI timely provided EPA Notice of its dispute, (Ex. A.) which led to the signing of a confidentiality agreement and informal dispute resolution (Ex. B.). QDI provided its formal offer of compromise on February 3, 2012 (see Ex. C) and the parties timely began formal dispute resolution pursuant to the OU2/OU3 and OU1 Consent Decrees thereafter. Thus, any waiver argument EPA purports to retain based on QDI's alleged failure to submit a notice of dispute is meritless. See EPA Statement of Position at 2.

**EPA misstates the history of negotiation of the side letter as to future costs.**

The Agency misstates the factual background underlying the August 30, 2010 side letter agreement (Side Letter). Indeed, EPA's statement of facts borders on purposeful amnesia of the months-long good faith negotiations between the parties and the assurances made by the EPA relating to the consent decrees. As noted in QDI's Statement of Position, QDI has

consistently objected to exorbitant and poorly documented cost assessments in connection with the Site for over six years and would not enter into the OU2 Consent Decree (committing to perform the OU2 remedy) without some form of assurance that these practices would not continue. The attached certification of Eric B. Rothenberg demonstrates that this concern motivated settlement negotiations culminating in the August 30, 2010 side letter referenced in EPA's Statement of Position and served as the material inducement for the OU2 decree. (Ex. D.)

EPA's reliance on the "merger clause" cannot relieve it from its assurances to QDI. Merger clauses, like the one in OU2, are not conclusive evidence of the absence of other agreements. At most they shift the burden to QDI to demonstrate the existence of additional agreements and QDI has amply demonstrated the same. *See, e.g., Carolina First Bank v. Stambaugh*, 2011 WL 6217409, at \*8 (W.D.N.C. 2011) ("Merger clauses create a rebuttable presumption that the writing represents the final agreement between the parties."). Indeed, if EPA is now suggesting that it proffered the Side Letter knowing it would seek to avoid the same under the merger clause, it would appear that the Agency engaged in fraudulent inducement. The remedy for fraudulent inducement is rescission.

Moreover, EPA misses the point in its reliance on the merger clause: the side letter demonstrates that the even the Agency believed that future recovery costs would be "substantially" lower under the OU2 Decree because QDI would be taking over the remedial action. However, as discussed in QDI's March 30, 2012 Statement of Position, those costs have only diminished, on average, by \$30,000 per year, even though QDI is *conducting all the remedial and removal actions once performed by EPA and other contractors*.

Indeed, QDI is left wondering what actions were taken "overseeing" the recovery action that resulted in \$237,000 invoice. Unfortunately, as discussed in QDI's Statement of Position, the EPA failed in its affirmative obligation to adequately document these costs.

**EPA has not met its burden of adequately documenting recovery costs.**

EPA's response as to the adequacy of its documentation is without merit. First, EPA states that it furnished a "standard cost package" thereby obviating any need to properly document costs, but then cites no cases where such a "cost package" was at issue. Instead, two of Agency's cases have nothing at all to do with challenges to the adequacy of EPA's cost documentation,<sup>1</sup> and one case merely states in summary fashion that EPA adequately documented its costs without elaboration.<sup>2</sup> The only cases EPA cites that actually analyze the sufficiency of EPA's cost documentation involve facts completely absent here: namely, EPA's itemized evidence of costs, testimony from EPA officials certifying the costs, and testimony about the methodology employed. *See, e.g., United States v. Am. Cyanamid Co.*, 786 F. Supp.

<sup>1</sup> *See United States v. Kramer*, 913 F. Supp. 848, 853 (D.N.J. 1995) (not addressing adequacy of documentation at all); *United States v. R.W. Meyer, Inc.*, 889 F.2d 1497 (6th Cir. 1989) (same).

<sup>2</sup> *United States v. Chromalloy Am. Corp.*, 158 F.3d 345, 352 (5th Cir. Tex. 1998) (noting EPA submitted detailed cost summaries, without any further discussion or description);



152, 161 (D.R.I. 1992); *United States v. Chrysler Corp.*, 168 F. Supp. 2d 754, 769 (N.D. Ohio 2001). None of these cases suggest that forwarding a "standard cost package" satisfies requirements of the NCP.

In *American Cyanamid*, the court adopted most of a special masters' recommendations, wherein certain costs were disallowed based on EPA's inadequate documentation. 786 F. Supp. 152, 161 (D.R.I. 1992). The court struck costs documented in a "Letter Report"—a report from the contractor identifying site-specific charges—because "[i]t has not been reconciled by EPA; it has not been entered into EPA's accounting system; there is no statement of reasonableness from the project officer (which would be required had a journal voucher been processed for this transaction); the letter report was submitted 3 1/2 years after the services were performed; and the letter report has been liberally redacted." *Id.* at 160 (emphasis added). Most importantly, the court disallowed certain costs because the method of cost calculation was not "sufficiently documented or justified." The court could find nothing in the summaries which "*reasonably relates*" to the actual costs incurred. *Id.* at 161.

By way of contrast, the court allowed certain interagency costs where "the government's on-scene representative during this stage of the clean-up, testified that he personally recommended payment of approximately \$ 430,000." *Id.* In fact, in all the cases cited by EPA where the court found costs adequately documented, the costs were always documented and corroborated by direct testimony or a certification by the personnel performing the work. See, e.g., *Chrysler Corp.*, 168 F. Supp. 2d at 769 (documentation included "invoices from [contractor], a *Certification of Invoice and/or Invoice Acceptance Form*, and proof of payment in the form of an EPA Contract Disbursements Treasury Schedule") (emphasis added); *California v. Neville Chem. Co.*, 213 F. Supp. 2d 1134, 1139 (C.D. Cal. 2002) (timesheets, cost estimates, and accountant and attorney declarations) (emphasis added); *American Cyanamid*, 786 F. Supp. at 158 (receiving testimony from thirteen witnesses relating to the costs); *United States v. Hardage*, 982 F.2d 1436, 1442-1443 (10th Cir. Okla. 1992) (documentation included affidavits of various EPA and DOJ employees). No such documentation and corroboration are present here.

The facts in the current dispute could not be farther from those in the cases cited by EPA. Here, there are no itemized timesheets showing even the date that the contractor allegedly performed the work being billed for, let alone specific diary entry descriptions of the work performed or the employee(s) conducting that work. Nor were the costs certified as reasonable by the EPA. See ER 1110-2-500(6)(b)(5) (certification for reasonableness). Absent itemized details of the work performed and corroborating testimony from EPA to support these vague and questionable work descriptions, EPA cannot meet its burden to sufficiently and accurately documents recovery costs. See, e.g., *Am. Cyanamid Co.*, 786 F. Supp. at 160.

**Future Recovery Costs must be reasonable.**

Notwithstanding Congress' clear statutory intent for remedial actions to be cost-effective, EPA advances the position that, in incurring future recovery costs, it is not bound by

any metric of reasonableness—either through federal regulations governing its authority and actions, or through the NCP. EPA is mistaken on both counts.

**First**, EPA states that EPA's compliance with federal regulations governing its authority "have been decided by the courts." None of EPA's cases, however, support that statement (three have nothing to do with federal regulations at all). For example, in *United States v. Reilly Tar & Chemical Corp.*, the court addressed whether recovery actions were limited to actions incurred under a specific subsection of CERCLA (actions authorized by President). 546 F. Supp. 1100, 1118 (D. Minn. 1982). The Court found that the "notwithstanding" clause of Section 107 made it "independent of the authorized uses of the Fund under section 111 defense to liability." *Id.*<sup>3</sup> Clearly, *Reilly* is inapposite to this matter.

The only cited case dealing with federal regulations fails to support EPA's position. In *United States v. Hardage*, the court rejected a federal procurement law challenge to recovery costs in part because the defendant did not "provide any evidence that there was any violation of federal procurement laws in connection with the Hardage site." 733 F. Supp. 1424, 1435 (W.D. Okla. 1989). The Court did not hold that federal procurement challenges to recovery costs were not cognizable. Instead, it held that defendants failed to support their argument with evidence. *Id.* Here, QDI has demonstrated that EPA violated its own governing regulations and its procurement authority. See QDI's Statement of Position at 5-7. Thus, EPA is without any authority for its declaration of unbridled authority in connection with cost recovery actions.

**Second**, EPA argues that there can be no reasonableness challenges to individual costs, just to underlying response actions. Yet many courts, including some cited by EPA in its brief, have in fact evaluated the individual costs in a cost recovery action. See, e.g., *United States v. R.W. Meyer, Inc.*, 889 F.2d 1497, 1508 (6th Cir. Mich. 1989) ("To prevail on its claim that the EPA's costs were inconsistent with the NCP, Meyer had to demonstrate that the EPA's decision to incur the challenged costs was "arbitrary or capricious."); see also *United States v. Dico, Inc.*, 266 F.3d 864, 879 (8th Cir. Iowa 2001) ("Presumably, any attorney fees that were not reasonably incurred would be held inconsistent with the NCP or else there would appear to be no limiting principle to a claim by the government for attorney fees as part of CERCLA response costs), but the burden would be on the responsible party to show unreasonableness."); *United States v. USX Corp.*, 68 F.3d 811, 817 (3d Cir. 1995) (noting that the district court "declined to grant summary judgment in favor of the United States on its damage claim . . . finding that there were genuine issues of material fact 'regarding the reasonableness of the [Remedial Investigation and Feasibility Study] and whether the United States' response costs were incurred due to a 'needless and expensive monitoring study'").

EPA's cited cases are also factually distinguishable from the matter at hand. Importantly, the cases do not involve challenges to oversight costs arising out of a consent

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<sup>3</sup> See also *United States v. Northeastern Pharmaceutical & Chemical Co.*, 579 F. Supp. 823, 850 (W.D. Mo. 1984) (same); *United States v. Fairchild Industries, Inc.*, 766 F. Supp. 405, 411-13 (D. Md. 1991) (EPA not required to give notice and opportunity to respond before taking remedial action).

decree.<sup>4</sup> Instead, they involve the responsible party trying to avoid payment to EPA for the costs the Agency incurred performing site remedies. *Cf. United States v. Kramer*, 913 F. Supp. 848, 864 (D.N.J. 1995) (“Where responsible persons have taken no action to remediate the hazardous waste releases for which they are liable, the statute does not permit second-guessing of the reasonableness and efficiency of costs incurred when the government had to take those steps.”); *United States v. Chromalloy Am. Corp.*, 158 F.3d 345, 352 (5th Cir. Tex. 1998) (affirming a district court’s determination that EPA’s oversight costs were reasonable and necessary). Here, QDI is performing the remedy, not the government or any contractor.

Nor has QDI received the benefit of any of the safeguards referenced in EPA’s cited cases. *Cf. Kramer*, 913 F. Supp. at 864-865 (“The limitation on recovery of response costs “incurred” by the government similarly implies that costs unrelated to the duly selected remedy are unrecoverable, and also that costs that are projected or probable are not recoverable until they have been paid by the government, again implying the regularity and due care of governmental accounting and disbursement measures as a safeguard.”). Here, EPA is unable to produce documentation that would allow verification that a cost was actually incurred in connection to the project, and in a manner that comports with “due care governmental accounting and disbursement standards.” There are no “built-in” safeguards to address QDI’s concerns. Indeed, this is the very concern echoed in the US EPA Inspector General’s report, “EPA Superfund Contract Initiatives and Controls to Reduce Fraud, Waste and Abuse”—EPA’s lack of adherence to internal controls and documentation requirements, resulting in an increase in inflated and fraudulent extramural costs.

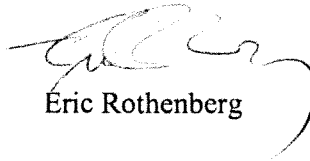
Instead of responding to the concerns at issue here, or furnishing documentation to establish oversight costs are reasonable, EPA states that QDI presented no “evidence of fraud, kickbacks, fictitious bids *or other activity that would call into question EPA’s costs.*” (emphasis added) Similarly, EPA claims that QDI failed to show “that the contractors paid by EPA have reaped unjustified millions.” By these statements, EPA is acknowledging that there is a metric for reasonableness of individual costs—it just happens to be “millions” of dollars. But there is no principled basis to arrive at “millions” versus hundreds of thousands (like the claim here). Unjustified is unjustified. The evidence QDI presented aptly demonstrates the existence of “activit[ies] that would call into question EPA’s costs,” and that those costs are unreasonable (and unjustified based on the inadequate documentation) in comparison to historic costs, current remediation costs, and EPA’s own opinion about oversight costs.

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<sup>4</sup> QDI cannot verify two citations by EPA given that they appear to be citations to two unpublished orders in cases from 1991 whose dockets are not electronically accessible to the public. See EPA Statement of Position at 7. Even if EPA provided copies of these to QDI, their persuasive value, as unpublished orders from other district court cases dating twenty years ago, is of negligible import to this case.

Accordingly, and for the reasons noted herein, we renew our request for relief from the subject oversight costs.

Sincerely,



Eric Rothenberg

Encl.

## EXHIBIT A



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OUR FILE NUMBER  
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October 19, 2011

Juan M. Fajardo  
Assistant Regional Counsel  
Emergency and Remedial Response Division  
U.S. EPA Region 2  
290 Broadway, 19th Floor  
New York, NY 10007-1866

Re: **Request for Documentation on OU1, OU2, OU3 Costs for Chemical  
Leaman Tank Lines Inc. Bridgeport NJ Superfund Site**

Dear Juan:

I am writing in respect of costs covered in SCORPIOS reports on the referenced operable units as received by Quality Distribution Inc.'s team on Monday, October 17, 2011. We believe these costs to be excessive, especially in consideration of the side bar "letter of understanding" reached as to our June 2, 2010 OU2 Consent Decree respecting the likely extent of response costs to be incurred after March 15, 2010. We therefore need to review documentation as to these costs, particularly back-up to the "vouchers" for Army Corps charges for which we require time records showing date of service, hours and description of service.

Thanks in advance for your assistance and please give me a call if we can provide further detail as to our request.

Sincerely,

Eric Rothenberg

cc: David L. Weigert, Esq (US DOJ - ERND)

## **EXHIBIT B**

**Agreement Regarding Confidentiality of Business Information  
Chemical Leaman Tank Lines, Inc., Superfund Site**

Quality Distribution, Inc. (AQDI") has requested that the United States Environmental Protection Agency (AEPA@) provide QDI with certain documents in support of EPA's Bill for Collection No. 2721126S050 and No. 2721126S051 with respect to the Chemical Leaman Tank Lines, Inc., Superfund Site (ASite@). Some of the supporting documentation in question has been submitted to EPA by various contractors (hereinafter, "Submitters") listed in Appendix 1. That supporting documentation contains certain information which may be entitled to confidential treatment under regulations codified at 40 CFR Part 2. Furthermore, the parties herein agree that the limitation on the disclosure of the documents subject to this Agreement is necessary in order to protect the interests of the Submitters in the confidentiality of their business information.

The terms of this Agreement Regarding Confidentiality of Business Information (hereinafter "Agreement") are as follows:

1. EPA shall provide documents containing information which may be entitled to confidential treatment to QDI and such documents shall be handled in accordance with the terms of this Agreement.

2. As used in this Agreement, the term "confidential information" means trade secrets or commercial or financial information submitted to EPA and which may be entitled to confidential treatment under 40 CFR Part 2. This information has not been determined by EPA under 40 CFR Part 2, Subpart B, not to be entitled to confidential treatment.

3. Any documents that might contain confidential information pursuant to 40 CFR Part 2.100, et. seq. and that are produced by EPA pursuant to this Agreement shall be marked conspicuously with the word "CONFIDENTIAL" by EPA prior to production to QDI.

4. Information designated as confidential under this Agreement shall not be used or disclosed by QDI or any other person subject to paragraph 7 below for any purpose other than for review of EPA's Bill for Collection No. 2721126S050 and No. 2721126S051.

5. QDI and QDI's counsel who obtain information specifically designated as confidential hereunder, and anyone else who may subsequently become subject to this Agreement, as set forth below, shall not disclose or permit disclosure of this information to any other person, including without limitation any officer, director, employee, agent, or representative of QDI, QDI's counsel, or any nonparty to this Agreement, except in the following circumstances:

a. Disclosure may be made to employees of QDI or QDI's counsel who have responsibility for reviewing EPA's claim for payment of the amounts set forth in EPA's Bill for Collection No. 2721126S050 and No. 2721126S051. Any employee to whom disclosure is made shall be advised of, and become subject to, the provisions of this Agreement prior to such



disclosure. The term "employee" as used herein means only an individual who is on the payroll of QDI or QDI's counsel and who routinely receives a salary and employee benefits from QDI or QDI's counsel. Persons, firms, contractors, or independent contractors or corporations engaged by QDI or QDI's counsel on a temporary or contract basis, shall be subject to the requirements of subparagraph (b) of this paragraph 5.

b. Disclosure may be made to consultants, witnesses, experts, or employees of experts (hereinafter collectively referred to as "Expert(s)") employed or otherwise engaged by QDI or QDI's counsel to assist in the review and preparation of EPA's Bill for Collection No. 2721126S050 and No. 2721126S051. Prior to disclosure to any Expert, the Expert must agree to be bound by the terms of this Agreement and must execute the Confidentiality Agreement attached as Appendix 2. A copy of each executed Confidentiality Agreement shall be furnished to EPA and each Submitter not less than five (5) business days prior to disclosure to the Expert of any information which EPA has designated as being confidential.

6. QDI or QDI's counsel and any other person subject to this Agreement who obtains information designated as confidential hereunder shall take all necessary and appropriate measures to maintain the confidential nature of the information, shall share such information only with persons authorized to receive it pursuant to this Agreement, and shall retain the information in a secure manner. Except as provided in paragraph 5 above, no other person shall be permitted access to the information.

7. Any person who obtains access to information designated as confidential under this Agreement may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof only for the purpose of reviewing EPA's Bill for Collection No. 2721126S050 and No. 2721126S051. All copies, duplicates, extracts, summaries or descriptions of the information or portions thereof shall be subject to the terms of this Agreement to the same extent and manner as original documents.

8. Any unauthorized disclosure of information designated as confidential under this Agreement shall not result in a waiver of any Submitter's claim of confidentiality. QDI and all persons who sign Appendix 2 (copy attached hereto) agree that the Submitter(s) who may have a proprietary interest in any information provided to QDI relating to the Site may have a right to seek compensation from them if they make any unauthorized disclosure of any confidential business information which they obtain relating to the Site.

9. Within 60 days after receipt of QDI's receipt of documents subject to this Agreement, any person who obtained information designated as confidential under this Agreement shall assemble and return such information to EPA, including all copies, extracts, summaries, or descriptions of the information or portions thereof. Such return shall be certified in writing by the person who obtained the information from EPA. All such information covered by this Agreement which constitutes the work product of counsel for QDI shall be destroyed and the person who created such work product shall inform EPA in writing that all such information has been destroyed.

**Re: Agreement Regarding Confidentiality of Business Information  
Chemical Leaman Tank Lines, Inc. Superfund Site**

For: Quality Distribution, Inc.

Name: Eric R. Rosenberg

Title: Counsel

Address: 2 Times Sq, NY 10036

Signature: 

Date: 11.21.2011

**Re: Agreement Regarding Confidentiality of Business Information  
Chemical Leaman Tank Lines, Inc. Superfund Site**

For: U.S. Environmental Protection Agency – Region II

Date: \_\_\_\_\_

\_\_\_\_\_  
Eric Schaaf  
Regional Counsel  
EPA-Region II

**APPENDIX 1**  
**List of Contractors**

- 1) GRB Environmental Services, Inc.
- 2) Alion Science and Technology Corporation
- 3) Lockheed Martin Technology Services

**APPENDIX 2**  
**BUSINESS INFORMATION CONFIDENTIALITY AGREEMENT**

The undersigned is currently working at \_\_\_\_\_ which is located at \_\_\_\_\_. During the past year the undersigned has been employed or otherwise engaged as a consultant or contractor by the following company located at the corresponding address:

The undersigned hereby acknowledges that he/she has read the foregoing Agreement Regarding Confidentiality of Business Information for the Chemical Leaman Tank Lines, Inc. Superfund Site (AAgreement@), understands the terms thereof, and agrees to be bound by such terms. The undersigned understands that disclosure of information which has been designated as confidential under the Agreement may cause substantial harm to the affected business' competitive position. Accordingly, among other responsibilities, the undersigned shall only share such information with persons specifically authorized to receive the information pursuant to the Agreement, shall retain the information in a secure manner, and shall use such information only for the purposes authorized by the Agreement. The undersigned understands that the pledge of confidentiality under this Confidentiality Agreement continues after any lawsuit associated with the settlement of EPA=s claim for costs is over. Furthermore, the undersigned understands that a breach of the Agreement may subject him/her to civil claims for damages and to criminal prosecution under 42 U.S.C. ' 9604(e)(7)(B).

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## EXHIBIT C



## O'MELVENY & MYERS LLP

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February 3, 2012

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Assistant Regional Counsel  
U.S. EPA Region 2  
290 Broadway, 19th Floor  
New York, NY 10007-1866

WRITER'S E-MAIL ADDRESS  
erothenberg@omm.com

Re: **Proposal for Resolution of October 17, 2011 Oversight Costs Dispute;  
Bridgeport NJ Superfund Site**

Dear Juan:

Thank you (and David Weigert) for your assistance in efforts to resolve the above dispute, including our call on January 31, 2012. We provided our Notice of dispute on October 19th resulting in entry of a confidentiality agreement for review of documents on November 22, 2011. You provided documents in support of your oversight costs claim on December 12, 2011 and we have since had several written and oral exchanges in an effort to reach a resolution.

Following our call on January 31<sup>st</sup>, I conferred with principals of QDI and would like to propose the following approach to final resolution. QDI will (with reservation of rights) immediately advance payment of \$280,000 to EPA for what QDI believes to be the value of EPA costs which you are claiming and as identified in the supporting documents you furnished, provided:

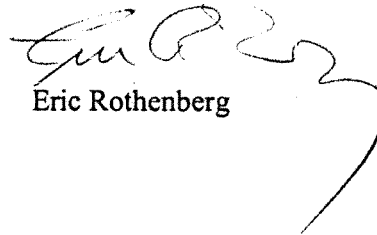
- EPA agrees to reduce the amount of financial assurance required under the February 2, 2010 OU2 Consent Decree by \$1.85M, or a new total of \$3.18M. Further to our call, I attach the current (December 12, 2011) RDWP Schedule which shows Completion of the Work by May 8, 2017, on which date the Construction Completion Report will be issued. There is no basis for O&M financial assurance after this date since groundwater remediation and containment is provided under the OU1 remedy and the treatment plant has been in operation since mid-July 2011. We note that the \$3.18 M revised amount still includes a 10% contingency calculated against the original financial assurance value. To expedite this settlement, we are not seeking to change the form of financial assurance at this time.

Juan M. Fajardo, February 3, 2012 - Page 2

- EPA agrees to accept a reduced payment of \$220,000 (in addition to the \$280,000 already paid) within 30 days for the balance of the oversight cost bill. The balance of costs are for charges presented by the Army Corps of Engineers which (as you will see from the attached excerpt) include overhead of estimated 20% on the charges of its contractors (primarily Malcolm Pirnie) without any back up documentation of Malcolm Pirnie costs. As noted in our October 19<sup>th</sup> Notice of Dispute, we also consider these costs, which are the primary component of the \$236,000 in charges for the OU2/OU3 components to be in derogation of our August 27, 2010 side letter understanding the future costs would not be material.
- You have offered that the Agency will expedite completion of the OU3 five year review originally due in June of 2011 with due consideration to concluding the OU3 portion of the remedy. As we have discussed, the OU1 treatment facility has been in operation since mid-July 2011 and the Agency already has data in hand to establish that the OU1 remedy has not mobilized any residual contamination in the wetlands (see attached July 2011 OU3 Main Swale Area Monitoring Report). We have also reached agreement in principle that any further action to address residual contamination newly discovered in the wetlands is covered by the ongoing OU1 groundwater treatment system or commitment to hot spot removal or treatment under OU2.

Please let us know as soon as possible if this proposed final resolution is acceptable.

Sincerely,



Eric Rothenberg

Encl.

cc: David Weigert, Esq.

EBR

## EXHIBIT D



O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
(212) 326-2000  
Eric B. Rothenberg, Esq.  
Attorneys for Defendant Quality Distribution, Inc.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
(before the United States Environmental Protection Agency)

UNITED STATES OF AMERICA

Plaintiff,

v.

QUALITY DISTRIBUTION, INC.

Defendant.

Civil Action No. 10-cv-05098-NLH -KMW

**CERTIFICATE OF**  
**ERIC B. ROTHENBERG, ESQ.**  
**IN RESPECT OF OVERSIGHT**  
**COST CHALLENGE, BRIDGEPORT**  
**NJ SITE**

Eric B. Rothenberg, in lieu of oath or affidavit, certifies that:

1. I am an attorney-at-law in the State of New York at the law firm of O'Melveny & Myers, LLP, Coordinating Counsel for defendant Quality Distribution, Inc. ("QDI") in the above captioned matter.

2. On July 9, 2010, on behalf of Quality Distribution Inc. (QDI), I submitted the attached good faith offer of settlement to US EPA in connection with its OU1 and OU2 past cost claim in the amount of \$1,930,000. (See Attachment 1.) In that letter, I noted the long history of poor documentation of oversight costs for all operable units of the Bridgeport, NJ site, including the

Agency's outstanding demand for reimbursement in full of \$950,891.23 for the wetlands portion of the remedy (OU3).

3. In the July 9, 2010 letter, QDI offered to: (1) Pay the full amount of a \$950,891.23 OU3 oversight cost bill notwithstanding poor documentation of the same and the absence of a Consent Order providing for cost recovery and (2) Pay \$1,000,000 of the OU1 and OU2 past costs claim. Thereafter, Juan Fajardo and David Weigert on behalf of the Agency advised that they would consider a material reduction in the amount of the OU1 and OU2 past costs claim only if QDI proceeded to make full payment on the OU3 costs.

4. In reliance on this representation, QDI made the full payment of \$950,891.23 on July 30, 2010 and proceeded to negotiate terms for an OU2 Consent Decree under which QDI would perform the soils remediation remedy. The Consent Decree negotiation, other than the payment provision, was substantially complete by August 20, 2010.


5. On August 20, 2010, having reached no accommodation on the amount of payment under the subject OU2 Decree, I conferred with Messrs. Fajardo and Weigert and suggested that the total OU1 and OU2 payment be reduced to \$1,450,000 and that this amount cover both past and future costs for the OU2 remedy since QDI would be performing the same and the Agency could not be expected to have material future OU2 costs. That same day, Mr. Weigert called my office and suggested a reduced payment of \$1,570,000 to cover OU2 past costs only. He and Mr. Fajardo suggested that QDI should not be concerned about future OU2 oversight costs since the same would be "minimal".

6. On August 23, 2010, I conferred with Mr. Weigert and confirmed that QDI was prepared to agree to the proposed \$1,570,000 payment in consideration of past costs only, provided that EPA would furnish a side letter to substantiate its representations that future OU2 costs would

not be of a material nature. We agreed to these terms and further agreed that signature pages would be exchanged on August 27, 2012.

7. On August 27, 2010, at 2:47 pm, having not received the promised side letter agreement, I sent a copy of the signature page to Messrs. Fajardo and Weigert and advised that I would provide the original signature page on receipt of the side letter. (See Attachment 2.) At 3:24 pm that same date, Mr. Fajardo provided the attached side letter and I placed the original signature page in the overnight mail. (See Attachment 3.)

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.



Eric B. Rothenberg

Date: May 11, 2012

## **ATTACHMENT 1**



## O'MELVENY & MYERS LLP

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July 9, 2010

### VIA E-MAIL AND U.S. MAIL

David L. Weigert  
Trial Attorney  
U.S. Department of Justice - ENRD  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611

OUR FILE NUMBER  
0688362-00020

WRITER'S DIRECT DIAL  
(212) 326-2003

WRITER'S E-MAIL ADDRESS  
erothenberg@omm.com

**Re: Proposed Second Operable Unit (OU2) U.S. Environmental  
Protection Agency (Agency) Consent Decree for Chemical Leaman,  
Bridgeport NJ NPL Site**

Dear David:

Further to our recent calls, and on behalf of Quality Distribution Inc. (QDI), this provides a supplemental good faith offer of settlement on past costs in the referenced matter. As you know, we have reviewed and discussed the Agency's documentation on past costs up through March 15, 2010 in the amount of \$1,930,000. In almost all instances, this documentation reflects combined costs of the Agency and its contractors for both the second and third operable units without attribution of costs to the separate units. Notwithstanding this lack of documentation for separate units, QDI has agreed to pay the full amount of the Agency's demand on third operable unit (OU3) past costs in the amount of \$950,891.23 on August 1, 2010.

After discussion, QDI is seeking the Agency's approval of a reduced past cost payment for OU2. In addition to the aforementioned issues, QDI is unable to reconcile the final OU2 past costs demand with its estimated expense for completion of the RI/FS and ROD on OU2, even adjusted for indirect costs. We also note that much of the work referenced in the ROD and the conclusions reached generally track the RI/FS work product provided to the Agency in 2006. Based on our recent discussions, we do not believe there is a basis for improving on the Agency's available documentation or explanation of work done on OU2 since 2006.

Accordingly, at this time QDI proposes to pay \$1,000,000 to the Agency for OU2 past costs incurred, up through and including the date of execution of the Consent Decree. Assuming no material costs accrued on OU2 since March 15th, this would represent two-thirds of the

O'MELVENY & MYERS LLP

David L. Weigert, July 9, 2010 - Page 2

Agency's combined costs for OU2 and OU3, with a full commitment to reimburse future costs. In connection with this offer, we would also ask that the Agency provide (via the side letter as we've done for OU3) its best estimate of future oversight costs for all three operable units so that QDI may plan for the same.

Thank you for your courtesies to date on working with us on a resolution of OU2 claims and remedy. We look forward to discussing this matter with you further.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric", with a long horizontal stroke extending to the left.

Eric Rothenberg

**ATTACHMENT 2**

**Rothenberg, Eric**

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**From:** Rothenberg, Eric  
**Sent:** Friday, August 27, 2010 2:47 PM  
**To:** 'Fajardo.Juan@epamail.epa.gov'; 'David.Weigert@USDOJ.Gov'  
**Cc:** Jon Gold  
**Subject:** OU2 Consent Decree Signature Page - Defendant QDI  
**Attachments:** 20100827143654116.pdf

As promised, I attach our signature for the referenced decree. I will receive the original which I will hold to forward to you on receipt of our agreed "side letter".

Thanks for working to get this done with us notwithstanding vacation schedules.

Best

E

**Eric B. Rothenberg**  
**O'Melveny & Myers LLP**  
7 Times Square, New York, NY 10036  
212-326-2003  
[erothenberg@omm.com](mailto:erothenberg@omm.com)

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**From:** Janey Henderson [<mailto:JHenders@QualityDistribution.com>]  
**Sent:** Friday, August 27, 2010 2:39 PM  
**To:** Rothenberg, Eric  
**Cc:** Jon Gold; Jim Rakitsky  
**Subject:** Signature Page - Defendant QDI

Hi Eric,

The attached document is sent to you at the request of Jon Gold.

Have a good weekend.

**Janey Henderson**  
**Corporate Paralegal**  
**Quality Distribution, Inc.**  
4041 Park Oaks Boulevard  
Tampa, FL 33610  
813-569-7382 - Direct Line  
813-630-9567 - Direct Fax  
[henderson@qualitydistribution.com](mailto:henderson@qualitydistribution.com)



## **ATTACHMENT 3**

## **Rothenberg, Eric**

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**From:** Fajardo.Juan@epamail.epa.gov  
**Sent:** Friday, August 27, 2010 3:24 PM  
**To:** Rothenberg, Eric  
**Cc:** 'David.Weigert@USDOJ.Gov'; Jon Gold  
**Subject:** Re: OU2 Consent Decree Signature Page - Defendant QDI

Eric,

As you know, the Operable Unit Two (OU2) consent decree includes provisions for the reimbursement of "Past Response Costs" incurred by EPA from January 1, 2004 through March 15, 2010. Consistent with the e-mail I sent you earlier today, EPA has conducted OU2 response work at the Site and has incurred OU2 response costs after March 15, 2010. More specifically, EPA is overseeing QDI's removal of soils at locations deemed to be "hot spots," and as a result, has incurred additional response costs in connection with OU2 at the Site. Moreover, EPA has incurred "enforcement costs" in connection with OU2 since March 15, 2010. Those enforcement costs are related to the OU2 consent decree we have been negotiating and which QDI signed today, August 27, 2010.

In comparison to the more than \$1.93 million in OU2 past response costs EPA incurred from January 1, 2004 through March 15, 2010, the response costs incurred by EPA after March 15, 2010, do not believe to be substantial.

Juan